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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR    | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-------------------------|---------------------|------------------|
| 10/656,523      | 09/05/2003  | Richard James McDermott | 21990-RA            | 8049             |

30184 7590 10/12/2006

MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C.  
1899 POWERS FERRY ROAD  
SUITE 310  
ATLANTA, GA 30339

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| EXAMINER |
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DONNELLY, JEROME W

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| ART UNIT | PAPER NUMBER |
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3764

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/656,523

Applicant(s)

MCDERMOTT ET AL.

Examiner

Jerome W. Donnelly

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

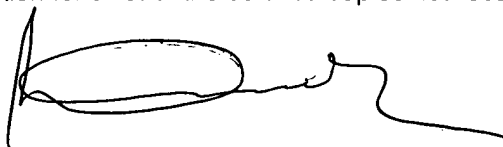
**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.



**JEROME DONNELLY  
PRIMARY EXAMINER**

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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Claims 16, 17, 22, 27, 28 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Woolley.

Woolley discloses a device comprising: metal bottomless wall procluding entry which is positionably over a recessed area, said device being circular in shape.

In regard to claim 28, “adapted to receive fails to further limit the claim by adding additional elements to the claims

In regard to claim 40, Woolley discloses a device comprising: a retaining wall selected from a group comprising a retaining wall comprising a plurality of through holes formed on an upper peripheral edge.

Claims 1, 9, 14 rejected under 35 U.S.C. 102(a) as being anticipated by Wiley.

In regard to claims 1 and 9 Wiley discloses a device comprising a corrugated segmented wall, wherein said wall is bottomless, said wall being removably attached to supporting plates (26).

In regard to claim 14, note the safety net of Wiley fig. 1.

Claims 1, 6, 7 and 8 rejected under 35 U.S.C. 102(b) as being anticipated by Raasch et al 6071213.

Raasch et al disclose a device comprising a segmented wall (30) and support rings 14 and 16.

In regard to claim 8, note Fig. 5. Claims 1, 4-13, 17, 18, 21, 23, 26, 29, 31-33, 35, 37 and 38 rejected under 35 U.S.C. 102(b) as being anticipated by Donald Gordon et al. See Fig. 2.

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Claims 1 and 15 rejected under 35 U.S.C. 102(b) as being anticipated by Jewell et al.

Jewell et al discloses a device comprising a segmented wall 38, 40, 46, 44, 48 etc. and padding. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolley in view of Wiley.

Woolley discloses a device as claimed in claims 1-3 and 17-20 the teaching or a segmented corrugated wall.

Wiley teaches manufacturing retaining walls of segmented corrugated material. Given the above teaching the examiner notes that it would have been obvious and well known in the art to manufacture the wall member of Woolley of segmented corrugated material selected from the claimed group as disclosed in claim 3.

As to the device being positionable over a recessed area, the device of Woolley as broadly claimed is capable of being positioned over a recessed area.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woolley in view of Wiley and Jewell et al.

The examiner notes that it would have been obvious to provide the device of Woolley modified with padding in view of the safety padding of Jewell et al.

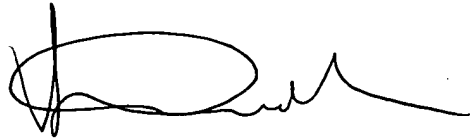
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Claims 31, 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyd et al 5299989.

Boyd et al discloses a device comprising a circular wall, absent a bottom, which is positionable in a body of water (recessed area), said wall having a mat tensioned over said wall.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

JEROME DONNELLY  
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Jerome Donnelly', written over a horizontal line.

Jerome Donnelly